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ABSTRACT

Presented are selected summaries of pending and completed litigation throughout the country concerning handicapped children and legal responsibility in the right to an education, the right to treatment, and student placement. Generally speaking, the plaintiffs are children representing a disability area who allege violation of their civil liberties, and the defendents are various state officials and officials of pertinent schools. Summaries are provided for six court cases on the right to an education, two cases on the right to treatment, and two cases on student placement. Briefly mentioned are two cases each on the right to an education and on the right to treatment which will receive additional discussion in the next continuing summary, pending further information. (CB)

ED 061694

A CONTINUING SUMMARY OF PENDING AND COMPLETED LITIGATION REGARDING THE EDUCATION OF HANDICAPPED CHILDREN

edited by

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(The work presented herein was performed pursuant to a grant from the Bureau of Education for the Handicapped, Office of Education, U.S. Department of Health, Education, and Welfare.)

Increasingly in recent months the nation's courts have been giving considerable attention to the education, placement and treatment of handicapped children. The decisions to date have substantiated the right of handicapped children to equal protection under the law -- including an education and full rights of notice and due process in relation to their selection, placement, and retention in educational programs.

The State-Federal Information Clearinghouse for Exceptional Children (SFICEC), a project supported by the Bureau of Education for the Handicapped, U. S. Office of Education, located at The Council for Exceptional Children, collected the information presented in this summary of relevant litigation from a variety of sources including attorneys, organizations and the plaintiffs involved in the cases. In the summation of the actions presented focus is directed to education.

This summary does not include all cases filed to date. Information is continuously being received about cases, and, thus, there is always something new. SFICEC will continue to acquire, summarize, and distribute this information. Those interested in more in-depth information should contact SFICEC.

In addition to this material, SFICEC has access to extensive information regarding law, administrative literature (rules and regulations, standards, policies), and attorney generals' opinions of the state and federal governments regarding the education of the handicapped. For further information about the project's activities and services contact:

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RIGHT TO AN EDUCATION

May 11, 1972

PENNSYLVANIA ASSOCIATION FOR RETARDED CHILDREN, Nancy Beth Bowman, et. al., v. COMMONWEALTH OF PENNSYLVANIA, David H. Kurtzman, et. al., Civil Action No. 71-42 (3 Judge Court, E. D. Pennsylvania).

In January, 1971, the Pennsylvania Association for Retarded Children (P. A. R. C.) brought suit against Pennsylvania for the state's failure to provide all retarded children access to a free public education. In addition to P. A. R. C., the plaintiffs included fourteen mentally retarded children of school age who were representing themselves and "all others similarly situated," i. e. all other retarded children in the state. The defendants included the state secretaries of education and public welfare, the state board of education, and thirteen named school districts, representing the class of all of Pennsylvania's school districts.

The suit, heard by a three-judge panel in the Eastern District Court of Pennsylvania, specifically questioned public policy as expressed in law, policies, and practices which excluded, postponed, or denied free access to public education opportunities to school age mentally retarded children who could benefit from such education.

Expert witnesses presented testimony focusing on the following major points:

1. The provision of systematic education programs to mentally retarded children will produce learning.

2. Education cannot be defined solely as the provision of academic experiences to children. Rather, education must be seen as a continuous process by which individuals learn to cope and function within their environment. Thus, for children to learn to clothe and feed themselves is a legitimate outcome achievable through an educational program.

3. The earlier these children are provided with educational experiences, the greater the amount of learning that can be predicted.

A June, 1971 stipulation and order and an October, 1971 injunction, consent agreement, and order resolved the suit. The June stipulation focused on the provision of due process rights to children who are or are thought to be mentally retarded. The decree stated specifically that no such child could be denied admission to a public school program or have his educational status changed without first being accorded notice and the opportunity of a due process hearing. "Change in educational status" has been defined as "as assignment or re-assignment, based on the fact that the child is mentally retarded or thought to be mentally retarded, to one of the following educational assignments: regular education, special

education, or to no assignment, or from one type of special education to another." The full due process procedure from notifying parents that their child is being considered for a change in educational status to the completion of a formal hearing was detailed in the June decree. All of the due process procedures went into effect on June 18, 1971.

The October decrees provided that the state could not apply any law which would postpone, terminate, or deny mentally retarded children access to a publicly supported education, including a public school program, tuition or tuition maintenance, and homebound instruction. By October, 1971, the plaintiff children were to have been reevaluated and placed in programs, and by September, 1972, all retarded children between the ages of six and twenty-one must be provided a publicly supported education.

Local districts providing preschool education to any children are required to provide the same for mentally retarded children. The decree also stated that it was most desirable to educate these children in a program most like that provided to non-handicapped children. Further requirements include the assignment of supervision of educational programs in institutions to the State Department of Education, the automatic re-evaluation of all children placed on homebound instruction every three months, and a schedule the state must follow that will result in the placement of all retarded children in programs by September 1, 1972. Finally, two masters or experts were appointed by the court to oversee the development of plans to meet the requirements of the order and agreement.

The June and October decrees were formally finalized by the court on May 3, 1972.

May 11, 1972

MILLS v. BOARD OF EDUCATION OF THE DISTRICT OF COLUMBIA, Civil Action No. 1939-71 (District of Columbia).

Shortly after the conclusion of the Pennsylvania case, another landmark was achieved in a similar case in the District of Columbia. In Mills v. D. C. Board of Education, the parents and guardians of seven District of Columbia children brought a class action suit against the Board of Education of the District, the Department of Human Resources, and the Mayor for failure to provide all children with a publicly supported education.

The plaintiff children ranged in age from seven to sixteen and were alleged by the public schools to present the following types of problems that led to the denial of their opportunity for an education: slightly brain damaged, hyperactive behavior, epileptic and mentally retarded, and mentally retarded with an orthopedic handicap. Three children resided in public, residential institutions with no education program. The others lived with their families and when denied entrance to programs were placed on a waiting list for tuition grants to obtain a private educational program. However, in none of these cases were tuition grants provided.

Also at issue was the manner in which the children were denied entrance to or were excluded from public education programs. Specifically, the complaint said that "plaintiffs were so excluded without a formal determination of the basis for their exclusion and without provision for periodic review of their status. Plaintiff children merely have been labeled as behavior problems, emotionally disturbed, or hyperactive." Further, it is pointed out that "the procedures by which plaintiffs are excluded or suspended from public school are arbitrary and do not conform to the due process requirements of the fifth amendment. Plaintiffs are excluded and suspended without: (a) notification as to a hearing, the nature of offense or status, any alternative or interim publicly supported education; (b) opportunity for representation, a hearing by an impartial arbiter, the presentation of witnesses, and (c) opportunity for periodic review of the necessity for continued exclusion or suspension."

A history of events that transpired between the city and the attorneys for the plaintiffs immediately prior to the filing of the suit publicly acknowledged the Board of Education's legal and moral responsibility to educate all excluded children, and although they were provided with numerous opportunities to provide services to plaintiff children, the Board failed to do so.

On December 20, 1971, the court issued a stipulated agreement and order that provided for the following:

1. The named plaintiffs must be provided with a publicly supported education by January 3, 1972.

2. The defendants by January 3, 1972, had to provide a list showing (for every child of school age not receiving a publicly supported education because of suspension, expulsion, exclusion or any other denial of placement): the name of the child's parents or guardian; the child's name, age, address, and telephone number; the date that services were officially denied; a breakdown of the list on the basis of the "alleged causal characteristics for such non-attendance"; and finally, the total number of such children.

3. By January 3, the defendants were also to initiate efforts to identify all other members of the class not previously known. The defendants were to provide the plaintiffs' attorneys with the names, addresses, and telephone numbers of the additionally identified children by February 1, 1972.

4. The plaintiffs and defendants were to consider the selection of a master to deal with special questions arising out of this order.

A further opinion is presently being prepared by United States District of Columbia Court Judge Joseph Waddy which will deal with other matters sought by the plaintiffs including:

1. A declaration of the constitutional right of all children regardless of any exceptional condition or handicap to a publicly supported education.

2. A declaration that the defendants' rules, policies, and practices which exclude children without a provision for adequate and immediate alternative educational services and the absence of prior hearing and review of placement procedures denied the plaintiffs and the class rights of due process and equal protection of the law.

May 11, 1972

MICHAEL BURNSTEIN, FRED POLK, et. al. and ALAN MILLER, JONATHAN BOOTH, et. al. v. THE BOARD OF EDUCATION AND THE SUPERINTENDENT OF THE CONTRA COSTA COUNTY SCHOOL DISTRICT (Cal. Superior Court, Contra Costa County.)

The plaintiff children are described as autistic. for whom inappropriate or no public education programs have been provided. Thus, there are within this suit two sets of petitioners and two classes. The first class includes autistic children residing in Contra Costa County, California, who have sought enrollment in the public schools but were denied placement because no educational program was available. The second class of petitioners includes five children also residing in Contra Costa County and classified as autistic. These children have been enrolled in public special education classes but not programs specifically designed to meet the needs of autistic children.

The complaint alleges that no services were provided to any of the children named until the plaintiffs, in October, 1970, informed the defendants that "they were in the process of instituting legal action to enforce their rights to a public education, pursuant to the laws of the state of California and the Constitution of the United States." The children named in the second class were placed in special education programs, but as indicated, not a program designed specifically to meet their needs.

It is argued in the brief that "education for children between the ages of six and sixteen is not a mere privilege but is a legally enforceable right" under both the state laws of California and the United States. Further, it is pointed out that specialized programs to meet the needs of autistic children are required to enable these children to participate fully in all aspects of adult life. It is also indicated that autistic children are educable and that when they are provided with appropriate programs they can become qualified for regular classroom placement.

Based on the allegation that the petitioners have been denied their rights to an education by the school board who, although knowing of their request for enrollment in programs, "wrongfully failed and refused and continued to fail and refuse..." enrollment, the petitioners request the court to command the school board "to provide special classes and take whatever other and further steps necessary to restore to petitioners the right to an education and an equal educational opportunity..."

The arguments presented by the attorneys for the petitioners justify on a variety of legal bases their rights to publicly supported educational opportunities.

In addition to citing the equal protection provisions of both the United States and California Constitution s, it is also pointed out that "denial of a basic education is to deny one access to the political processes. Full participation in the rights and duties of citizenship assumes and requires effective access to the political system..." Further, the attorneys argue that "one may be denied his economic rights through denial of an education." In addition, the petitioners are not only denied the same educational benefits as non-handicapped children, but also are denied that which is provided to other school-age children suffering from mental or physical disabilities. Finally, the attorneys provide an argument that refutes the frequently used high cost rationale for the denial of special education programs. They say that "granting an education to some while denying it to others is blatant discrimination which cannot be tolerated... It certainly cannot be justified on the grounds that providing one with rights to which he is entitled but unlawfully denied will result in additional expense. If the respondent in this case is unable to receive funding for the required classes from the state, it is incumbent on it to reallocate its own budget so as to equalize the benefits received by all children entitled to an education."

This case is presently awaiting trial in the Superior Court of the State of California in and for the County of Contra Costa.

May 11, 1972

LORI CASE, et. al. v. STATE OF CALIFORNIA, DEPARTMENT OF EDUCATION, et. al., Civil Action No. 101679 (Cal. Superior Court, Riverside County.)

Lori Case is a school age child who has been definitively diagnosed as autistic and deaf and who may also be mentally retarded. After unsuccessfully attending a number of schools, both public and private for children with a variety of handicaps, Lori was enrolled in the multi-handicapped unit at the California School for the Deaf at Riverside, California. Plaintiff attorneys maintain that this unit was created specifically to educate deaf children with one or more additional handicaps requiring special education. Lori began attending the school in May 1970, and is alleged to have made progress - a point which is disputed by the defendants. The plaintiffs argue that to exclude her from Riverside would cause regression and possibly nullify forever any future growth. As a result of a case conference called to discuss Lori's status and progress in school, it was decided to terminate her placement on the grounds that she was severely mentally retarded, incapable of making educational progress, required custodial and medical treatment, and intensive instruction that could not be provided by the school because of staffing and program limitations.

The plaintiffs sought an immediate temporary restraining order and a preliminary and permanent injunction restraining defendants from preventing, prohibiting, or in any manner interfering with Lori's education at Riverside. A temporary restraining order and a preliminary injunction were granted by the Superior Court of the State of Californina for the County of Riverside.

The arguments presented by the plaintiffs are those seen in other "right to education" cases. The question of the definition of education or educability is raised. The plaintiff attorneys state that "if by 'uneducable' defendants mean totally incapable of benefitting from any teaching or training program, then plaintiffs are in agreement, but defendants' own declaration demonstrate that Lori is not uneducable in this sense. However, if by 'educable' defendants mean 'capable of mastering the normal academic program offered by the public schools,' then defendants are threatening to dismiss Lori on the basis of a patently unconstitutional standard. Application of such a narrow and exclusionary definition, in view of the extensive legislative provisions for programs for the mentally retarded, the physically handicapped, and the multi-handicapped would clearly violate both Lori's rights to due process and equal protection. The right to an education to which Lori is constitutionally entitled is the right to develop those potentials which she has."

Assuming acceptance of Lori's educability, the attorneys argue that "there is absolutely no distinction in law, or in logic, between a handicapped child and a physically normal child. Each is fully entitled to the equal protection and benefits of the laws of this State. Thus, to deprive Lori of her right to an educa-

tion ... would violate her fundamental rights."

The issue raised by the defendants regarding staffing and program limitations was answered by pointing out that the courts have ruled that the denial of educational opportunity solely on the basis of economic reasons is not justifiable. And finally the manner in which the disposition of Lori's enrollment at the school was determined was "unlawful, arbitrary and capricious and constituted a prejudicial abuse of discretion." It is pointed out that Lori's right to an education "... must be examined in a court of law, offering the entire panaply of due process protections ..."

The case was filed on January 7, 1972, and a temporary restraining order was granted the same day. A preliminary injunction was granted on January 28, 1972. Plaintiffs' first set of interrogatories were filed on March 10, 1972, and a trial date set for May 8, 1972. The original trial date has been changed to June 5, 1972.

May 11, 1972

CATHOLIC SOCIAL SERVICES, INC. JIMMY, DEBBIE, et. al. v. BOARD OF EDUCATION OF THE STATE OF DELAWARE, ROBERT MCBRIDE, KENNETH C. MADDEN, et. al.

Catholic Social Services of Delaware as part of its responsibilities places and supervises dependent children in foster homes. In the process of trying to obtain educational services for handicapped children, the agency found "... the special education facilities in Delaware totally adequate."

The three children named in the suit included:

Jimmy, age 10, a child of average intelligence who has had emotional and behavioral problems which from the beginning of his school career, indicated a need for special education. Although special education program placement was recommneded on two separate occasions, the lack of programs available prevented enrollment.

Debbie, age 13, has been diagnosed as a seriously visually handicapped child of normal intelligence who, because of her handicap, could not learn normally. She has had a limited opportunity to participate in a special education program, but as of September, 1971, none was available.

Johnnie, age 13, had for years demonstrated disruptive behavior in school which led, because of his teachers' inability to "cope" with him, to be recommended for placement in an educational program with a small student-teacher ratio, possibly in a class of "emotionally complex children." Until the time of the suit, he had not been able to receive such training.

Adrian, age 16, had a long history of psychiatric disability which prevented him from receiving public education. Following the abortive attempts of his mother to enroll him in school, he was ultimately placed in a state residential facility for emotionally disturbed children. This placement was made without psychological testing and with no opportunity for a hearing to determine whether there were adequate school facilities available for him. Approximately one year later he was brought to the Delaware Family Court on the charge of being "uncontrolled", and after no judgement as to his guilt or innocence, he was returned to the residential school on probationary status. If his behavior did not improve, as judged by the staff, he could later be committed to the State School for Delinquent Children. In July, 1970, the latter transfer was made without Adrian being represented by counsel or being advised of this right. Since that time, Adrian has received "some educational service ... but little or no specific training."

The complaint quotes the Constitution and laws of Delaware that guarantees all children the right to an education. Delaware Code specifies that "The State Board of Education and the local school board shall provide and maintain, under appropriate regulations, special classes and facilities wherever possible to meet the need of all handicapped, gifted and talented children recommended for special education or training who come from any geographic area." Further, the code defines handicapped children as those children "between the chronological ages of four and twenty-one who are physically handicapped or maladjusted, or mentally handicapped."

Because the respondents (Board of Education and others named in the complaint) have failed to provide the legally guaranteed education to the named children, the complaint urges that the respondents:

1. Declare that the petitioners have been deprived of rightful educational facilities and opportunities.

2. Provide special educational facilities for the named petitioners.

3. Immediately conduct a full and complete investigation into the public school system of Delaware to determine the number of youths being deprived of special educational facilities and develop recommendations for the implementation of a program of special education for those children.

4. Conduct a full hearing allowing petitioners to subpoena and cross-examine witnesses and allow pre-hearing discovery including interrogatories.

5. Provide compensatory special education for petitioners for the years they were denied an education.

The complaint appears, at this time, to be in limbo.

May 11, 1972

ASSOCIATION FOR MENTALLY ILL CHILDREN (AMIC), LORI BARNETT, et. al., v. MILTON GREENBLATT, JOSEPH LEE, et. al., Civil Action No. 71-3074-J (Massachusetts).

This class action suit is being brought by emotionally disturbed children against officers of the Boston school system, all other educational officers in school districts throughout the state, and the Massachusetts state departments of education and mental health for the alleged "arbitrary and irrational manner in which emotionally disturbed children are denied the right to an education by being classified emotionally disturbed and excluded both from the public schools and an alternative education program."

Lori Barnett, an eight year old child classified as emotionally disturbed, has never been provided with a public education by the Commonwealth. The situation has persisted even though she has sought placement in both the Boston special education program and residential placement in a state-approved school.

The suit specifically charges that as of July, 1971, a minimum of 1,371 emotionally disturbed children, determined by the Commonwealth as eligible for participation in appropriate educational programs, were denied such services. Instead they were placed and retained on a waiting list "for a substantial period of time." Although some of the children were receiving home instruction, this is not considered to be an appropriate program.

Secondly, it is alleged that the plaintiff children are denied placement in an arbitrary and irrational manner, and no standards exist on state or local levels to guide placement decisions in either day or residential programs. It is argued that, in the absence of state standards, the placement of some students while denying placement to others similarly situated violates the plaintiffs' rights of due process and equal protection.

Another issue in this case concerns the allegation that the plaintiff children are denied access to appropriate educational programs without a hearing thus violating their rights to procedural due process.

Finally, it is charged that the failure to provide the plaintiff children with an education, solely because they are emotionally disturbed "... irrationally denies them a fundamental right, to receive an education and to thereby participate meaningfully in a democratic society, in violation of the due process and equal protection clauses of the Fourteenth Amendment to the U. S. Constitution."

Declaratory judgement is sought to declare unconstitutional excluding or denying an emotionally disturbed child from an appropriate public education program for which he is eligible without a hearing. Also sought is a judgement of unconstitutionality regarding the denial of placement to eligible emotionally disturbed children in the absence of "... clear and definite ascertainable standards established for admission to that program;" the refusal of placement to eligible children in programs while similarly situated children are admitted to such programs; and the denial of education to a child solely because he is emotionally disturbed. Permanent injunction is also sought to prevent the defendants from violating plaintiffs' rights. Finally, an order is requested to require the defendants to prepare a plan detailing how the plaintiffs' rights will be fully protected and to appoint a master to monitor development and implementation of the plan.

The case is pending in the United States District Court for the District of Massachusetts.

that their civil rights are being violated. Further, the state must present a six-month progress report to the court and hire a qualified and experienced administrator for the institution.

As of this date, the state has filed notice to appeal some or all of the court's decisions.

May 11, 1972

WYATT et. al. v. STICKNEY M.D. et. al. Civil Action No. 3195-N (Alabama).

This action, originally focused on the claim of state hospitalized mentally ill patients to receive adequate treatment, began in September, 1970, in Alabama Federal District Court. In March, 1971, Judge Johnson ruled that mentally ill patients involuntarily committed to Bryce Hospital were being denied the right "to receive such individual treatment as [would] give each of them a realistic opportunity to be cured or to improve his or her mental condition." The court gave the defendants six months to upgrade treatment, to satisfy constitutional standards, and to file a progress report. Prior to the filing of that report, the court agreed to expand the class to include another state hospital for the emotionally ill and the mentally retarded at the Partlow State School and Hospital.

The defendants' six month progress report was rejected by the court and a hearing was scheduled to set objective and measurable standards. At the hearing in February, 1972 evidence was produced which led the court to find "the evidence... has vividly and undisputably portrayed Partlow State School and Hospital as a warehousing institution which because of its atmosphere of psychological and physical deprivation, is wholly incapable of furnishing habilitation to the mentally retarded and is conducive only to the deterioration and the debilitation of the residents." The court further issued an emergency order "to protect the lives and well-being of the residents of Partlow." In that order the court required the state to hire within 30 days 300 new aide-level persons regardless of "former procedures," such as civil service. The quota was achieved.

On April 13, 1972, a final order and opinion setting standards and establishing a plan for implementation was released. In the comprehensive standards for the total operation of the institution are provisions for individualized evaluations and plans and programs relating to the habilitation ("the process by which the staff of the institution assists the resident to acquire and maintain those life skills which enable him to cope more effectively with the demands of his own person and of his environment and to raise the level of his physical, mental, and social efficiency.") Habilitation includes, but is not limited to, programs of formal structured education and treatment of every resident. Education is defined within the order as "the process of formal training and instruction to facilitate the intellectual and emotional development of residents." The standards applying to education within the order specify class size, length of school year, and length of school day by degree of retardation.

Finally, the court requires the establishment of a "human rights committee" to review research proposals and rehabilitation programs, and to advise and assist patients who allege that the standards are not being implemented or

May 11, 1972

NEW YORK STATE ASSOCIATION FOR RETARDED CHILDREN et. al. v. ROCKEFELLER, et. al. 72 Civil Action No. 356. PATRICIA PARISI, ANSELMO CLARKE, et. al. v. ROCKEFELLER, et. al. (E. D. New York)

These two actions were filed in the U. S. District Court for the Eastern District of New York. Both allege that the conditions at the Willowbrook State School for the Mentally Retarded violated the constitutional rights of the residents. These class action suits are modeled after the Wyatt v. Stickney (Partlow State School and Hospital, Alabama) case.

Extensive documentation was presented by the plaintiffs alleging the denial of adequate treatment. The evidence touched all elements of institutional life including: overcrowding, questionable medical research, lack of qualified personnel, insufficient personnel, improper placement, brutality, peonage, etc. It is alleged in the Parisi, et. al. v. Rockefeller complaint that "No goals are set for the education and habilitation of each resident according to special needs and abilities and intended to lead to discharge or community placement within a specified period of time." It was specifically charged that 82.7 per cent of the residents are not receiving school classes, 98.3 per cent are not receiving pre-vocational training, and 97.1 per cent are not receiving vocational training.

The plaintiffs in Parisi, et. al. are seeking: declaration of their constitutional rights, establishment of constitutionally minimum standards for applying to all aspects of life; due process requirements to determine a "developmental program" for each resident; development of plans to construct community-based residential facilities and to reduce Willowbrook's resident population; cessation of any construction of non-community based facilities, until the court determined that sufficient community based facilities exist; and appointment of a master to oversee and implement the orders of the court.

Both complaints include specific mention of the necessity for including within "developmental plans" and subsequent programs, appropriate education and training.

The preliminary schedule on these cases, which were to be consolidated, was for plaintiffs and defendants to meet in early May to stipulate standards.

PLACEMENT

LARRY P., M.S., M.J., et. al. v. RILES, et. al. Civil Action No. C-71-2270 (N.D. California).

This class action suit was filed in late November, 1971, on behalf of the six named black, elementary aged children attending classes in the San Francisco Unified School District. It is alleged that they have been inappropriately classified as educable mentally retarded and placed and retained in classes for such children. The complaint argued that the children were not mentally retarded, but rather "the victims of a testing procedure which fails to recognize their unfamiliarity with the white middle class cultural background and which ignores the learning experiences which they may have had in their homes." The defendants included state and local school officials and board members.

It is alleged that misplacement in classes for the mentally retarded carries a stigma and "a life sentence of illiteracy." Statistical information indicated that in the San Francisco Unified School District, as well as the state, a disproportionate number of black children are enrolled in programs for the retarded. It is further pointed out that even though code and regulatory procedures regarding identification, classification, and placement of the mentally retarded were changed to be more effective, inadequacies in the processes still exist.

The plaintiffs asked the court to order the defendants to do the following:

1. Evaluate or assess plaintiffs and other black children by using group or individual ability or intelligence tests which properly account for the cultural background and experience of the children to whom such tests are administered;

2. Restrict the placement of the plaintiffs and other black children in classes for the mentally retarded on the basis of results of culturally discriminatory tests and testing procedures;

3. Prevent the retention of plaintiffs and other black children now in classes for the mentally retarded unless the children are immediately re-evaluated and then annually retested by means which take into account cultural background;

4. Place plaintiffs into regular classrooms with children of comparable age and provide them with intensive and supplemental individual training thereby enabling plaintiffs and those similarly situated to achieve at the level of their peers as rapidly as possible;

5. Remove from the school records of these children any and all indications that they were/are mentally retarded or in a class for the mentally retarded and ensure that individual children not be identified by the results of individual or group I.Q. tests;

6. Take any action necessary to bring the distribution of black children in classes for the mentally retarded into close proximity with the distribution of blacks in the total population of the school districts;

7. Recruit and employ a sufficient number of black and other minority psychologists and psychometrists in local school districts, on the admissions and planning committees of such districts, and as consultants to such districts so the tests will be interpreted by persons adequately prepared to consider the cultural background of the child. Further, the State Department of Education should be required in selecting and authorizing tests to be administered to school children throughout the state, to consider the extent to which the testing development companies utilized personnel with minority ethnic backgrounds and experiences in the development of culturally relevant tests;

8. "Declare pursuant to the Fourteenth Amendment to the United States Constitution, the Civil Rights Act of 1964, and the Elementary and Secondary Education Act and Regulations, that the current assignment of plaintiffs and other black students to California mentally retarded classes resulting in excessive segregation of such children into these classes is unlawful and unconstitutional and may not be justified by administration of the currently available I.Q. tests which fail to properly account for the cultural background and experience of black children."

This case is pending in the United States District Court for the Northern District of California.

May 26, 1972

LEBANKS, et. al. v. SPEARS, et. al., Civil Action No. 71-2897 (E.D. Louisiana, New Orleans Division)

Eight black children classified as mentally retarded, have brought suit against the Orleans Parish (New Orleans) School Board and the superintendent of schools on the basis of the following alleged practices:

1. Classification of certain children as mentally retarded is done arbitrarily and without standards or "valid reasons." It is further alleged that the tests and procedures used in the classification process discriminate against black children.

2. The failure to re-evaluate children classified as retarded to determine if a change in their educational status is needed.

3. Failure to provide any "education or instruction" to some of the children on a lengthy waiting list for special education programs, and also denial of educational opportunities to other retarded children excluded from school and not maintained on any list for readmittance.

4. Maintenance of a policy and practice of placing no children beyond the age of 13 in special education programs.

5. Failure "... to advise retarded children of a right to a fair and impartial hearing or to accord them such a hearing with respect to the decision classifying them as 'mentally retarded,' the decision excluding them from attending regular classes, and the decision excluding them from attending schools geared to their special needs."

6. The unequal opportunity for an education provided to all children who are classified as mentally retarded; unequal opportunity between children classified as mentally retarded and normal; and unequal opportunity between black and white mentally retarded children.

The attorneys for the plaintiffs in summary indicate that many of the alleged practices of the parish* violate the equal protection and due process provisions of the fourteenth amendment. They further state that "continued deprivation [of education] will render each plaintiff and member of the class functionally useless in our society; each day leaves them further behind their more fortunate peers."

The relief sought by the plaintiffs includes the following:

1. A $20,000.00 damage award for each plaintiff;

2. Preliminary and permanent injunction to prevent classification of the plaintiffs and their class as mentally retarded through use of procedures and standards that are arbitrary, capricious, and biased; the exclusion of the plaintiffs and their

* Parish is the Louisiana term for county.

class from the opportunity to receive education designed to meet their needs; discrimination "in the allocation of opportunities for special education, between plaintiffs, and other black retarded children, and white retarded children," the classification of plaintiffs and their class as retarded and their exclusion from school or special education classes without a provision of a full, fair, and adequate hearing which meets the requirements of due process of law."

This case is expected to be heard early in the summer, 1972.

Information will be provided about the following cases when available:

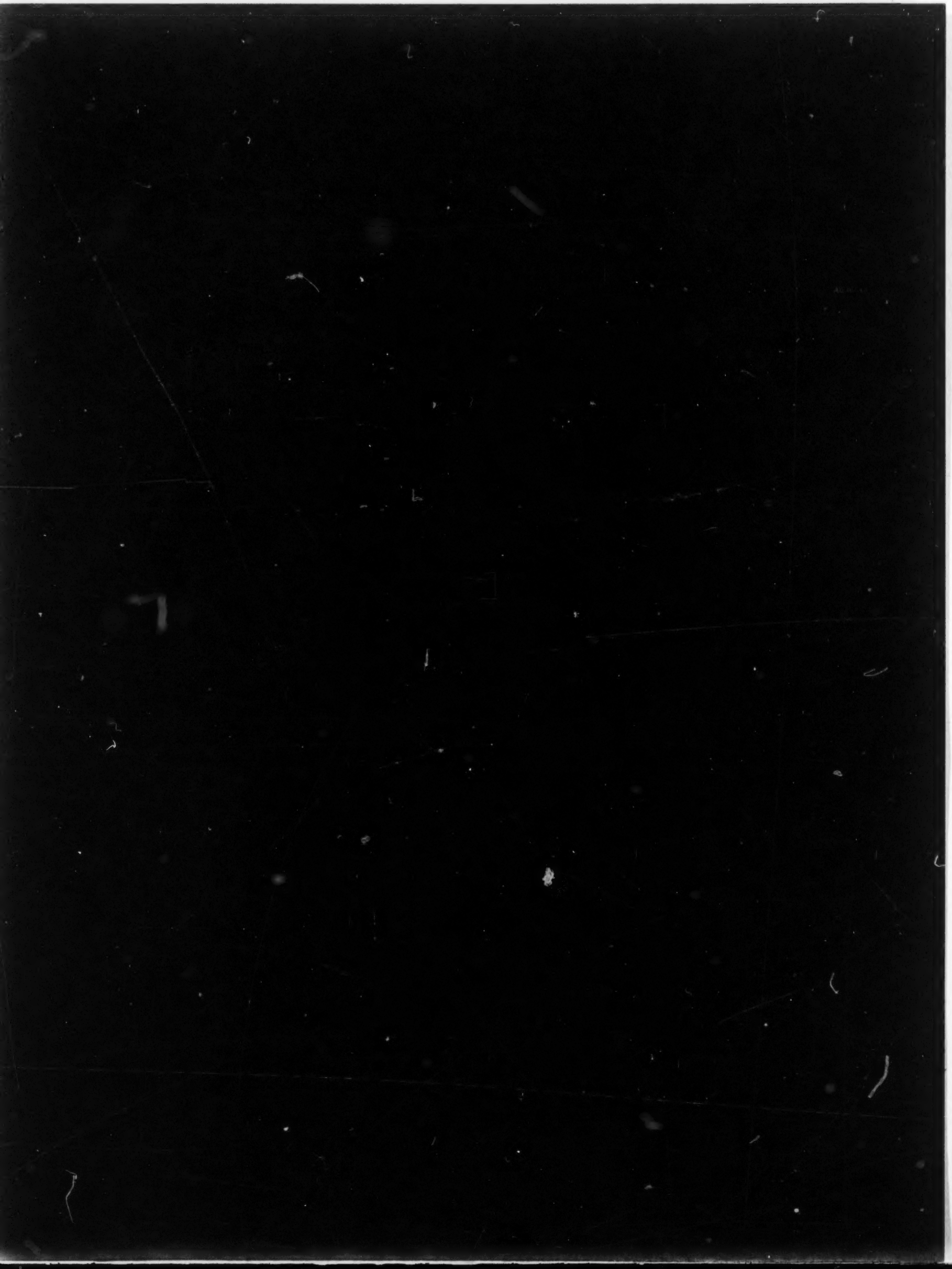
FRED C. WOLF, et. al. v. THE LEGISLATURE OF THE STATE OF UTAH
Civil Action No. 182646 (Third Judicial District Court, Utah).

A 1969 ruling in the Third Judicial District Court of Utah guaranteed the right to an education at public expense to all children in the state. This action was brought on behalf of two trainable mentally retarded children who were the responsibility of the State Department of Welfare. The children were not being provided with suitable education. The judge, in his opinion, stated that the framers of the Utah constitution believed "in a free and equal education for all children administered under the Department of Education." He further wrote that "the plaintiff children must be provided a free and equal education within the school districts of which they are residents, and the state agency which is solely responsible for providing the plaintiff children with a free and public education is the State Board of Education."

REID v. NEW YORK BOARD OF EDUCATION, Civil Action No. 71-1791 (Federal District Court, New York).

This class action was brought to prevent the New York Board of Education from denying brain-injured children adequate and equal educational opportunities. Plaintiffs alleged that undue delays in screening and placing these children prevented them from receiving free education in appropriate special classes, thus infringing upon their state statutory and constitutional rights, guarantees of equal protection and due process under the fourteenth amendment. The district court dismissed the case noting that state courts could conceivably provide an appropriate remedy withough resorting to federal court. The Second Circuit, vacated the order and remanded the case, with instructions that the district court retain jurisdiction pending the determination of appellants' state law claims in the New York courts.

At this point the case is pending.



Information will be provided about the following cases when available:

RICCI, et. al. v. GREENBLATT, et. al., Civil Action No. 72-469 F (Massachusetts)

This is another class action suit regarding the right to treatment in institutions. The plaintiffs were children in the Belchertown State School in Massachusetts and the Massachusetts Association for Retarded Children, who like in the Wyatt, Parisi, and New York Association for Retarded Children actions, alleged violations of their constitutional rights. The defendants were various state officials and officials of the school. Motions for a temporary restraining order and preliminary injuction were granted by the court in February, 1972, which serves to maintain the status quo until litigation is completed.

Among the provisions of those orders was that "the defendants develop comprehensive treatment plans for the residents which include adequate and proper educational services." On April 20, 1972, the defendants had filed answers to all allegations of the plaintiffs' complaint. A hearing is expected by early summer.